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OFFICE OF PETITIONS

In re Application of :
Morris, et al. :
Application No. 10/654,413 :
Filed: September 3, 2003 :
Attorney Docket No. 15047US01 :
For: PLAYGROUND FOUNDATION
FORMED OF A COMPOSITE LAYERED
SURFACE

ON PETITION

This is a decision on the petition under 37 CFR 1.181, filed July 19, 2006, to withdraw the holding of abandonment of the above-identified application.

The petition under 37 CFR 1.181 is GRANTED.

This application became abandoned for failure to respond in a timely manner to the Restriction Requirement, mailed October 18, 2005, which set a one (1) month extendable period for reply. No extension of time being obtained and no reply being received in the Office, the application was held abandoned on November 19, 2005. A Notice of Abandonment was mailed on June 30, 2006.

Petitioners assert that a proper response (in the form of a request for a one month extension of time and required fee and amendment/election) was timely received in the Office on December 19, 2005. In support, petitioners submitted a copy of the amendment/election with a proper certificate of facsimile transmission affixed to the correspondence.

Under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The transmittal letter bears a proper certificate of mailing, dated December 19, 2005, in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. In addition, the person signing the certificate, Joseph M. Barich, had reasonable basis to expect that the correspondence would be transmitted on December 19, 2005.

In addition, petitioners have submitted an auto-reply facsimile transmission from the Office, showing that the Office received a 15 page document from Joseph M. Barich on December 19, 2005. A review of the financial records for the above-identified application reveals that a \$60.00 one month extension of time fee was charged to petitioners' deposit account on December 21, 2005.

It is apparent the December 19, 2005 facsimile transmission was received in the Office and later misplaced.

Therefore, the response to the October 18, 2005 Restriction Requirement was timely filed. Accordingly, the petition is **GRANTED**, the Notice of Abandonment is hereby vacated, and the holding of abandonment withdrawn. No petition fee has been or will be charged in connection with this matter.

After the mailing of this decision, the application file will be forwarded to Technology Center A.U. 1773 for consideration of the amendment filed on December 19, 2005 and resubmitted on July 19, 2006.

Telephone inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



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